

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6948

Petition of Vermont Department of Public	)	
Service for an Investigation into the	)	Hearing at
Universal Service Fund Charge for Fiscal	)	Montpelier, Vermont
Year 2005	)	June 2, 2004

Order entered: 6/15/2004

PRESENT: Thomas S. Lyle, Hearing Officer

APPEARANCES: Sarah Hofmann, Esq.  
for Vermont Department of Public Service

Peter H. Zamore, Esq.  
Sheehey Furlong & Behm, P.C.  
for Verizon New England Inc., d/b/a Verizon-Vermont

**I. INTRODUCTION**

Pursuant to 30 V.S.A. § 7523, the Vermont Public Service Board ("Board") must establish the Universal Service Fund surcharge rate each fiscal year (Fiscal Year 2005 runs from July 1, 2004, through June 30, 2005). In this Docket, the Vermont Department of Public Service ("Department" or "DPS") and Verizon New England Inc., d/b/a Verizon Vermont ("Verizon-Vermont") have entered into a stipulation and requested that the Board set a rate of 1.27% for Fiscal Year 2005 ("FY-2005")<sup>1</sup>. I recommend that the Board adopt the terms of the stipulation. Based on the projections submitted as record evidence, the 1.27% rate will continue to generate sufficient funds to meet the financial obligations of the Vermont Universal Service Fund ("VUSF").

It should be noted that a longer term analysis of the projected VUSF budget reveals a tendency by the parties to rely upon a conservative set of assumptions about telecommunications revenues and VUSF program disbursements. These assumptions have resulted in ending VUSF

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1. The current rate is 1.27%, so the surcharge will remain unchanged.

cash balances in excess of \$1 million in each of the past three years, which is more than the parties anticipated. While I may not necessarily agree with the underlying assumptions, I do recommend the Board approve the 1.27% surcharge rate because the risk (and associated costs) of having to reopen this docket in order to raise the surcharge rate in the event that the forecasted budget is materially at variance with real events as FY-2005 unfolds is greater than the benefit individual customers would realize from a small decrease in the surcharge rate.

#### Procedural History

In accordance with 30 V.S.A. § 7523, the DPS petitioned the Board on April 15, 2004, requesting the Board to establish a VUSF surcharge rate of 2% for the fiscal year beginning July 1, 2004. On May 25, 2004, the Department submitted testimony and exhibits modifying its recommendation to reflect a surcharge rate of 1.27%.<sup>2</sup> The Board is required to enter an order setting the rate for the coming fiscal year by June 15, unless the Vermont General Assembly does not enact an authorization amount for E-911 by May 15; in which case the Board may defer its decision until 30 days after the E-911 authorization is established. At this time, the appropriations bill has been passed by the 2004 General Assembly<sup>3</sup> but has not been signed by the Governor. The bill is expected to become law.<sup>4</sup>

#### Stipulation of the Parties

By Stipulation of June 1, 2004, the parties have agreed that the Board may set the FY-2005 VUSF surcharge at 1.27% . Exh. Joint 1. The parties have also stipulated that the Hearing Officer may make findings in this docket that are consistent with the parties' stipulation and testimony of Department witness, Deena Frankel, and exhibits DPS-1 through DPS-4, filed with the Board on May 28, 2004, regarding the VUSF's carry-over fund balance from the previous fiscal year, the revenue base and disbursement requirements. The parties agree that the stipulation shall not have precedential effect on future proceedings involving the Department or the other parties, except to enforce the stipulation.

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2. On May 28, 2004, the DPS filed revised testimony to correct typographical errors contained in the original filing.

3. H. 768, Appropriations Act.

4. Frankel pf. at 5.

## **II. FINDINGS**

This docket does not present any contested issues of fact between the parties. Based upon the stipulation of the parties and the prefiled testimony of the DPS, the Hearing Officer reports the following findings in accordance with 30 V.S.A. § 8.

### **Carry-forward Fund Balance**

1. The FY-2004 ending cash balance of the VUSF that will be carried forward into FY2005 is approximately \$1,146,502, roughly \$399,000 above the 2003 forecast. Frankel pf. at 2; Docket No. 6834, Order of 6/18/03 at 3.
2. The FY-2003 ending cash balance of the VUSF carried forward into FY-2004 was \$1,002,153, roughly \$251,000 above the 2002 forecast. Docket No. 6834, Order of 6/18/03 at 3.
3. The FY-2002 ending cash balance of the VUSF carried forward into FY-2003 was \$1,427,338, roughly \$315,000 above the 2001 forecast. Docket No. 6499, Order of 6/27/01 at 6 and Exh. DPS-1.
4. For three consecutive years, the actual ending cash balances of the VUSF carried forward into the subsequent fiscal years has exceeded forecasted ending cash balances by approximately one-third to as much as one-half. Exh. DPS-1; Docket No. 6834, Order of 6/18/03 at 3; Docket 6697; Docket No. 6499, Order of 6/27/01.
5. The VUSF will begin FY-2005 with a cash balance of \$1,146,502. Exh DPS-1.
6. The ending VUSF cash balance, carried forward at June 30, 2005, is estimated to be \$614,126, assuming estimates for VUSF program disbursements are accurate and revenues materialize. *Id.*

### **Disbursements**

7. VUSF disbursements are permitted under 30 V.S.A. §7511 for the following purposes: to make payments to the fiscal agent for services rendered under contract; to support the Vermont Telecommunications Relay Service ("VTRS"); to support the Vermont Lifeline program; and to support Enhanced 911 emergency services (E-911). Frankel pf. at 3.

Fiscal Agent

8. The estimated cost for compensation of the fiscal agent from July 1, 2004, through June 30, 2005, is \$125,000. Also, the DPS has budgeted an additional \$25,000 for the annual audit of the VUSF. Exh. DPS-1.

Telecommunications Relay Service

9. Funds to support the VTRS are disbursed to the state treasurer, in an amount determined by the Commissioner of Public Service to be reasonable. 30 V.S.A. § 7512.

10. The DPS has estimated a budget of \$400,174 to fully fund the VTRS during FY-2005. Anticipated disbursements are based on the DPS' analysis of current VTRS calling trends. The projected budget includes \$30,000 to pay for outreach programs, which will be included in a separate contract that has not yet been issued. Frankel pf. at 4; exhs. DPS-1 and 3.

11. In addition, the DPS has included \$75,000 for a Vermont adaptive equipment distribution program associated with VTRS that is authorized by 30 V.S.A. § 218a(e). This program has been administered by the Vermont Center for Independent Living under a contract that expires on June 30, 2004. The DPS is currently in the process of selecting a vendor for FY-2005. Frankel pf. at 4; Exh. DPS-1.

Lifeline

12. Funds to support the Vermont Telephone Lifeline Program are disbursed to telecommunications service providers that issue Lifeline credits to end-users. 30 V.S.A. § 7513.

13. The DPS has estimated a budget of \$1,277,224 to fully fund the Vermont Lifeline program. Frankel pf. at 3; exh. DPS-2.

14. This Lifeline budget was derived by projecting enrollment trends in the Lifeline program. The amount also takes into account Lifeline credits reimbursed by the state fund, as well as the benefit of providing non-published numbers to Lifeline-eligible persons who have final court-granted relief from abuse orders. Frankel pf. at 3-4; exh. DPS-2.

15. The estimated budget to pay for Lifeline administrative costs has been set at \$210,000. This year's Lifeline administrative budget includes a one-time increase of \$85,000 appropriated by the 2004 General Assembly to redesign an existing database maintained by

program administrators. The database redesign is intended to improve communications with program recipients. Frankel pf. at 4; exh. DPS-1.

#### Enhanced 911

16. Funds to support Enhanced 911 ("E-911") services will be paid by the fiscal agent to the state treasurer for deposit into the E-911 special fund. 30 V.S.A. § 7514.

17. The E-911 budget of \$3,241,031 was established by the Appropriations Act (H. 768), as passed by both houses of the 2004 General Assembly<sup>5</sup> that sets the amount to be transferred from the VUSF to E-911. Frankel pf. at 5; exh. DPS-1.

#### Total Program Disbursements

18. Total disbursements for VUSF program obligations during FY-2005 are projected to be \$5,353,429. Exh. DPS-1.

#### Revenues and Fund Balance

19. Each year the National Exchange Carrier Association ("NECA") provides the DPS with an estimate of eligible intrastate telecommunications revenues for all companies operating in Vermont. This year, NECA estimated in April, 2004, that FY-2004 (ending June 30, 2004) revenues will amount to \$391,351,041, an amount which is based on actual revenues through the end of February, 2004, and estimates for the remaining months in the fiscal year. In FY-2005, NECA estimates total Vermont revenue will be 1.89% less than FY-2004 revenues or approximately \$383,954,000. Frankel pf. at 5.

20. Upon receipt of NECA's estimate, the DPS then makes its own forecast of eligible intrastate telecommunications revenues to establish its recommended VUSF surcharge. In this proceeding, the DPS estimates total telecommunications revenue will amount to \$379,610,510 in FY-2005, 3.0% less than NECA's estimated FY-2004 year-end revenues. Frankel pf. at 5; exh. DPS-1.

21. According to the DPS, conservative assumptions about estimated eligible intrastate telecommunications revenue are warranted due to increased use of cable modems which are not subject to VUSF surcharges, declines in the use of dial-up Internet connections, declines in second lines at residences, and increased use of discounted service packages that depress total revenues. *Id.*

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5. At the time this Proposed Order for Decision was drafted, the appropriations bill had been passed by the General Assembly but had not yet been signed by the Governor. The bill is expected to become law.

22. Applying the recommended VUSF surcharge of 1.27% against the DPS estimated total revenue of \$379,610,510 will generate VUSF revenues of \$4,821,053. Exh. DPS-1.

23. The FY-2005 surcharge of 1.27% will leave an estimated ending cash balance at fiscal year end 2005 of \$614,126<sup>6</sup> after total program disbursements of \$5,353,429, assuming the total number of lifeline recipients and VTRS billable minutes of use increase, as the DPS projects, by 3% each and VUSF revenues materialize as anticipated. Exhs. DPS-2 and 3.

24. The FY-2005 ending cash balance recommended by the Department equals 145% of the average monthly disbursement for the VUSF. A fund balance of this amount achieves two purposes, according to the DPS. First, it ensures that fluctuations in cash flow in the fund will not require borrowing by the fiscal agent in order to make authorized disbursements as they are requested. Second, a fund balance at this level, according to the DPS, provides a cushion for small deviations that must be assumed between projected and actual revenues and expenses. The only certainties in the fund are the amounts that are capped by statute, such as the E-911 appropriation and the Equipment Distribution allocation. Maintaining a fund balance at the recommended level ensures that a larger than projected decrease in total eligible telecommunications revenue or a larger than projected increase in enrollment in VUSF programs can occur without requiring borrowing or a mid-year adjustment of the VUSF rate to cover the budgeted disbursements. Although a disbursement level for these programs is set by the Board in this docket, both VTRS and Lifeline are statutorily required services that cannot be cut off if the projected service level were to be exceeded. With an appropriate cushion in the fund balance, the DPS could petition the Board for a mid-year increase in the spending levels of these two programs without requiring a change in the VUSF rate. Frankel pf. at 5.

#### Customer Notification Requirements

25. The DPS recommends the following customer notification requirements:

- a. Each telecommunications service provider, including wireless eligible telecommunications carriers or ETCs, shall provide notification to customers of the Lifeline program eligibility criteria and the application process during either of the first two months of the

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6. Determined by adding the FY-2004 ending balance of \$1,146,502 to estimated FY-2005 revenues of \$4,821,053 less FY-2005 projected program disbursements of \$5,353,429.

calendar year 2005<sup>7</sup>.

- b. The notices shall be in the form prescribed by the DPS as laid out in the stipulation.

Frankel pf. at 6-7; exh. DPS-4; Stipulation at ¶ 3.

### **III. DISCUSSION**

#### **Disbursements**

There is no dispute among the parties concerning the funding of the fiscal agent. The cost estimates for fiscal agent services total \$125,000, plus \$25,000 for audit fees.

The DPS' estimate of Telecommunications Relay Service disbursements and the associated equipment distribution program is \$475,174.

The DPS requests \$1,277,224 to cover the costs associated with the distribution of Lifeline credits and \$210,000 in Lifeline administrative cost reimbursements.

In addition to the above-captioned disbursements, the Department has also asked the Board to set a surcharge rate that will generate sufficient VUSF revenues to fully fund the E-911 budget of \$3,241,031 approved by the 2004 General Assembly.

30 V.S.A. § 7511 specifies the types of expenditures and manner of disbursements by the fiscal agent. It is estimated that a total of \$5,353,429 will be distributed as described below.

- a. \$125,000 to pay costs payable to the fiscal agent under its contract with the Board and \$25,000 to pay the annual audit fee. Finding 8.
- b. \$400,174 to support the Vermont Telecommunications Relay Service in the manner provided by section 7512 of Title 30. And, an additional \$75,000 for the Vermont adaptive equipment distribution program associated with VTRS. Findings 9-11.
- c. \$1,487,224 to support the Vermont Lifeline program and administrative costs in the manner provided by section 7513 of Title 30. Findings 12-15.
- d. \$3,241,031 to support E-911 services in the manner provided by section 7514 of Title 30. Findings 16-17.

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7. Notification during these months will be particularly important, in order to inform persons who may apply through the Tax Department's tax package issued early in January.

### Revenue

The FY-2004 VUSF charge of 1.27% generated revenues that were sufficient to cover all the program costs in FY-2004 and yield a substantial year-end cash balance of \$1,146,053. Thus, the VUSF starts the new fiscal year with a substantially higher cash balance than anticipated in June, 2003, and will therefore have an ample amount of funds to cover FY-2005 disbursements even if revenue and cost projections are considerably (but not substantially) different than projected. It is anticipated by the parties that the FY-2005 rate of 1.27%, which is the same as the FY-2004 rate, will also raise sufficient funds to meet the FY-2005 funding obligations of the programs identified by the General Assembly in 30 V.S.A. § 7511(a). This finding is based upon:

- a. An anticipated beginning fund balance on June 30, 2004, of \$1,146,502.  
Finding 1.
- b. Anticipated total disbursements during the year of \$5,383,388.  
Finding 18.

### Customer Notification Requirements

There is no dispute among the parties concerning the customer notification requirements. Informing customers of service opportunities ensures a broad opportunity for program participation by all qualifying ratepayers. I recommend that the Board adopt and order these notification requirements of all carriers certified to provide telecommunications services in Vermont, including wireless eligible telecommunications carriers. Requiring wireless carriers to notify customers is consistent with the ETC notification and advertising conditions.

### Conclusions

In this annual investigation, the Board is asked to balance the state's obligation to fund vital social programs and the interest of customers who might prefer a reduction in the surcharges they typically incur on their telephone bills. As stated above, the VUSF program will distribute \$5.3 million to support families and individuals who qualify for assistance and E-911 services. The monthly cost of these programs is approximately \$1 per month, assuming an average telephone bill of \$80. As stated above, I recommend approval of the 1.27% surcharge rate because the risk that qualifying families and individuals might have their services needlessly interrupted due to an unintended shortfall in the VUSF outweighs the \$1 per month cost to the average Vermont telecommunications consumer.



However, I think it is necessary to renew my reluctance in making this recommendation as I did in Docket 6834. The VUSF has simply been raising more money than is needed to pay for the programs due to the parties' past reliance on a conservative set of assumptions about revenue and program enrollment. These conservative assumptions occur at two levels; each compound upon one another to generate more funds at year-end than is anticipated.

First, the parties in this docket have assumed that Vermont's telecommunications carriers will generate 3.0% less in total eligible intrastate revenue in fiscal year 2005. One reason for the revenue decline, according to the parties, rests on the assumption that more Vermont consumers are substituting analog dial-up telephone lines and second lines with cable modems, which have not been assessed VUSF surcharges to date. Additionally, the parties attribute reductions in Vermont revenues to declining price trends for intrastate long distance calling. Frankel pf. at 5. While there has been some evidence that cable modem substitutions are rising,<sup>8</sup> there is no evidence in the instant docket that the rate of cable modem substitution or increased price competition will result in a full 3.0% decline in FY-2005 revenues as predicted by the parties. Because NECA's estimate of a 1.89% decline in FY-2005 rests on a combination of actual and estimated data, I believe its forecast is more reliable and I would have preferred its use in developing the FY-2005 budget.

Second, the parties have assumed a 3.0% increase in the number of participants in both the Lifeline and VTRS programs. Based on a longer term analysis of enrollment trends, however, a 3.0% increase is unfounded. In actuality, enrollment has declined on average by 6% for the Lifeline program and 10% for VTRS.

As an alternative forecasting method to either NECA's or the DPS', the parties may instead want to consider using a three-year rolling average of eligible intrastate revenues and program enrollments. This method may result in a slightly lower surcharge to consumers while simultaneously providing a sufficient level of comfort that the VUSF will generate the necessary funds to pay for its programs.

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#### Opportunity to File Exceptions and Present Arguments

The parties have waived their opportunity to file exceptions and present arguments pursuant to 3 V.S.A. § 811.

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8. See Draft Vermont Telecommunications Plan of the Department of Public Service, v.4.0, March 2004, pp. 2-5.

Dated at Montpelier, Vermont, this 14<sup>th</sup> day of June, 2004.

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s/Thomas S. Lyle

Thomas S. Lyle  
Hearing Officer

#### **IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted.
2. The Vermont Universal Service Fund charge shall be 1.27%. This rate shall go into effect July 1, 2004, and remain in effect through June 30, 2005, unless revised in the manner provided by law.
3. Each telecommunications service provider, including wireless eligible telecommunications carriers, required to collect the USF charge shall provide notification of the Lifeline eligibility criteria and application process during either of the first two months of calendar year 2004. All notices shall conform to the language contained in Attachment A to the Stipulation. If, after negotiation, a telecommunications service provider and the DPS cannot agree on the form of the notice, then the parties can petition the Board for resolution of the conflict.
4. The fiscal agent shall pay the following amounts for Fiscal Year 2005, and according to the following priority:
  - a. The fiscal agent shall transfer to its own account no more than the sum permitted under contract between the Board and the fiscal agent. The amount under contract is not expected to exceed \$150,000 for the fiscal year.
  - b. The fiscal agent shall transfer to the State Treasurer, in monthly payments, funds necessary to adequately support the Vermont Telecommunications Relay Service and an additional \$75,000 for the VT-EDP adaptive equipment program associated with VTRS and carried out by an independent contractor. In no event shall the sums transferred exceed \$475,174 during Fiscal Year 2005, unless otherwise approved by the Board.
  - c. The fiscal agent shall recognize legitimate claims from local exchange carriers for credits and reimbursable expenses under the Vermont Lifeline program. It is anticipated that the annual total of all such claims will amount to \$1,487,224.
  - d. The fiscal agent is authorized to make monthly transfers to the State Treasurer to support enhanced-911 services at an annual rate of \$3,241,031.

5. The Board shall retain jurisdiction over this docket to make any further orders that may be required to administer the Vermont Universal Service Fund. Thomas Lyle is designated as Hearing Officer to consider and report upon any further proceedings that may be appropriate in this docket.

DATED at Montpelier, Vermont, this 15<sup>th</sup> day of June, 2004.

<u>s/Michael H. Dworkin</u>	)	
	)	
	)	PUBLIC SERVICE
<u>s/David C. Coen</u>	)	
	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: June 15, 2004

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*